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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Request of	)	
	)	
SPRINT SPECTRUM L.P. d/b/a SPRINT PCS	)	CC Docket No. 96-98
	)	
For Clarification Concerning Reciprocal Compensation for Commercial Mobile Radio Service Providers	)	CC Docket No. 95-185
	)	WT Docket No. 97-207

To: The Common Carrier Bureau
The Wireless Telecommunications Bureau

COMMENTS OF THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

The Personal Communications Industry Association ("PCIA")[1] hereby responds to the Public Notice, DA-00-1050 released May 11, 2000, seeking comments on the request (the "Request") of Sprint Spectrum L.P. d/b/a Sprint PCS ("Sprint PCS") for a Commission ruling confirming and clarifying the specific categories of costs that commercial mobile radio service

[1] PCIA is an international communications association dedicated to advancing seamless global wireless communications through its public policy efforts, marketing programs, international events and educational programs. PCIA members comprise a broad base of business sectors in wireless voice and data. PCIA's wireless carrier member companies are interconnected to the public switched telephone network ("PSTN"). Over the past four years since adoption of the 1996 amendments to the Act, PCIA's wireless carrier members have reached interconnection agreements with local exchange carriers ("LECs") via the negotiation and arbitration processes established by Sections 251and 252 of the Act. PCIA has had extensive discussions with its wireless carrier members regarding their interconnection experiences, and is therefore in a unique position to provide the FCC with an industry-level perspective regarding reciprocal compensation for CMRS providers.

("CMRS") providers are entitled to recover under Sections 251(b)(5)[2] and 252(d)[3] of the Telecommunications Act of 1996 (the "1996 Act").

The Sprint PCS Request asks the Commission to issue a ruling confirming the entitlement of CMRS carriers to receive asymmetrical cost-based compensation for transport and termination in an amount sufficient to cover all of the CMRS carriers' usage-sensitive components of delivering the call to the CMRS customer. Sprint PCS seeks this ruling because various state commissions have issued rulings pertaining to compensation for the transport and termination functions performed by CMRS carriers that are at odds with the compensation costing principles set forth in earlier Commission decisions.

I. Sprint PCS Has Articulated Properly the Applicable Costing Standard

The Sprint PCS Request - - and the accompanying legal memorandum[4] and white paper[5] - - contain cogent analyses of the prior Commission rulings articulating the principles that should apply in arriving at a cost-based compensation rate for CMRS carriers. Simply stated, prior Commission decisions establish that compensation for the transport and termination of calls should be based upon the forward-looking economic costs incurred by the terminating carrier that are "usage-sensitive" (*e.g.*, costs that vary depending on the volume of traffic) and thus represent the "additional cost" incurred by the terminating carrier to transport and terminate calls.

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[2] 47 U.S.C. § 251(b)(5).

[3] 47 U.S.C. § 252(d).

[4] *See* "A Legal Framework for CMRS Call Termination Cost-Based Compensation", filed February 2, 2000.

[5] *See* B. Mitchell and P. Spinagesh, "Transport and Termination Costs in PCS Networks: An Economic Analysis", filed April 7, 2000 (the "Sprint PCS White Paper").

PCIA concurs with Sprint that the architecture of CMRS networks is substantially different than wireline networks, with the result that certain additional components of the CMRS network are in fact usage-sensitive and thus appropriate to be included in the compensation paid by the originating carrier. PCIA also strongly agrees with Sprint PCS that the full recovery by CMRS carriers of the additional usage-sensitive costs of call termination is essential to create a level competitive playing field and to enable CMRS carriers to become full fledged competitors to the wireline telephone services. The full benefits of robust competition will not be achieved if CMRS carriers cannot recover all of the traffic-sensitive termination costs being imposed on them by the customers of originating carriers. In this regard, PCIA notes that the Commission repeatedly has observed the substantial public interest benefits that flow from the ability of CMRS services to act as a competitive substitute for landline telephone services.[6] This important pro-competitive goal will only be realized if wireless and wireline carriers are placed on an equal footing in terms of their ability to recover all usage-sensitive costs related to the transport and termination of calls.

Sprint PCS also correctly notes that there are different technologies and different engineering economics that apply to CMRS networks as compared to wireline networks. For example, the costs associated with the dedicated twisted copper pair that constitutes the landline "local loop" remain constant regardless of the number of calls that the landline end-user customer receives. In contrast, the portions of the CMRS network that provide the final connection between the called party and a mobile user are not dedicated; thus as the number of calls is increased, the amount of network consumed also increases correspondingly.

[6] *In the matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, 14 FCC Rcd 10,145 (1999).

Accordingly, the cost of this portion of the "wireless local loop" is directly traffic-sensitive. The reciprocal compensation principles established by the Commission - - and sound economic theory as set forth in the Sprint PCS White Paper - - indicate that these traffic-sensitive charges are indeed appropriate components of a properly prepared TELRIC cost study applicable to CMRS services.

PCIA also agrees with Sprint PCS that many states have undertaken an ill-conceived "equivalence" analysis of the functions performed by the CMRS network to determine which parts of the CMRS network are appropriately considered in establishing reciprocal compensation. The problem with this equivalence approach is that it completely ignores the fundamental underpinnings of the *Local Competition First Report.*[7] As ably demonstrated by Sprint PCS, the "local loop" was excluded in the *Local Competition First Report*, not because of its function, but rather because of its lack of usage-sensitivity. Since many portions of the CMRS network after the CMRS switch are usage-sensitive, such a flawed analysis will naturally result in the exclusion of many of the "additional costs" associated with the transport and termination of a call. The more appropriate analysis would be for the Commission to first determine which portions of a CMRS network are usage-sensitive and then to allow CMRS carriers to prove their individual costs associated with those particular elements.[8]

Many incumbent local exchange carriers ("ILECs") have argued that terminating compensation should include only the usage-sensitive costs associated with the CMRS switch

[7] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Local Competition Order*, 11 FCC Rcd. 15499, 16042 ¶ 1089 (1996), *aff'd in part, vacated in part on other grounds, Iowa Utilities Board v. FCC*, 120 F.3d 753 (8th Cir. 1997), *vacated in part on other grounds, AT&T Corp. v. Iowa Utilities Board*, 119 S. Ct. 721 (1999)("*Local Competition First Report*").

[8] PCIA would enthusiastically support the Commission establishing a proceeding to determine a costing model that could be used by carriers to prove their individual costs. The Commission has used this approach previously. PCIA submits that a costing model of this type would greatly assist in the determination of the "additional costs" associated with the termination of calls.

and, as a result, that all usage-sensitive costs of the network after the switch are not recoverable. Indeed, these same ILECs also argue that if terminating compensation included the usage-sensitive costs of the CMRS network after the CMRS switch, virtually all of the costs of the CMRS service would be recovered through terminating compensation. PCIA disagrees. The recognition that there are more traffic-sensitive components of a wireless network than a landline network will not result in wireless carriers recouping even a majority - - let alone all - - of the costs they incur in providing their CMRS service. The FCC's TELRIC pricing principles, as PCIA understands them, do not include the following significant cost components in the calculation of a CMRS terminating compensation rate:

a. Non-usage sensitive network costs;

b. Advertising/sales and marketing expenses;

c. Certain general and administrative costs (*e.g.*, general management, finance, legal, and corporate development costs);

d. Billing and collection expenses;

e. Customer service and service initiation expenses;

f. Costs related to the provision of non-local (*e.g.*, interstate or inter-MTA) and transit traffic services;

h. Historical costs that would not be incurred in an efficient, least-cost network;

i. Real estate costs associated with the above components (*e.g.*, sales offices);

j. Distribution and inventory costs;

k. Travel and training; nor

l. Goodwill.

As the CMRS industry grows, most of a CMRS business' expenses are included in the above-listed categories. Thus, even if a CMRS carrier recovered all of its usage-sensitive costs, much of the cost of provisioning CMRS service would still be borne by the CMRS customer. As a result, the Commission should reject ILEC arguments that CMRS carriers are seeking to recover through terminating compensation payments "most" or "all" of their costs of providing CMRS service.

II. Prior State Actions Are A Matter of Concern

The Sprint PCS Request indicates that state commissions have had difficulty applying the FCC's cost-based compensation principles to wireless networks, and cites state proceedings involving paging carriers in California[9] and Washington[10] as evidence of this fact. *See* Sprint Request, Attachment 1, p.9. PCIA can resoundingly affirm the truth of Sprint PCS' assertion based upon both PCIA's own participation in the California proceeding and the participation of its member company, Verizon Messaging Services LLC (formerly AirTouch Paging), in the Washington State proceeding. In both proceedings, the CMRS carrier expressly advocated that there were cost-sensitive elements of the wireless network beyond the switching component that should be deemed compensable under applicable FCC pronouncements. Indeed, in the Washington proceeding, AirTouch Paging adduced expert economic testimony and filed

[9] *Cook Telecom/Pacific Bell Arbitration*, Application No. 97-02-003, *Order Denying Rehearing*, Decision No. 97-09-123, 1997 Cal. PUC LEXIS 993, *17-18 (Sept. 24, 1997), *aff'g, Interim Opinion*, Decision No. 97-05-095, 1997 Cal. PUC LEXIS 242, *8 (May 21, 1997). *Pacific Bell v. Cook Telecom*, No. C-97-03990 SW, 1998 U.S. Dist. LEXIS 14430 (N.D. Cal. 1998), *aff'd*, No. 99-15324, 1999 U.S. App. LEXIS 33815 (9th Cir., Dec. 27, 1999).

[10] *AirTouch Paging/US WEST Arbitration*, Docket No. UT-990300, *Arbitrator's Report and Decision*, at 24-25 (April 28, 1999), *Order Modifying Arbitrator's Report*, ¶ 30, 1999 Wash. UTC LEXIS 199* 17 (July 1, 1999).

legal briefs that closely paralleled the arguments advanced in the Sprint PCS request.[11] PCIA concurs, therefore, in Sprint PCS' assertion that, contrary to the Washington State decision, the FCC never has ruled, let alone "made clear," that CMRS providers are limited to recovering their switching costs and may not recover their other traffic-sensitive costs of call termination.[12]

III. FCC Action is Necessary And Appropriate

The Commission previously has recognized that certain "explicit national standards" are necessary to enable the Commission and the states to carry out their respective responsibilities under the 1996 Act. *Local Competition First Report*, at para. 56. The Commission has found the need for national standards to be particularly acute in situations where conflicting state rulings would interfere with the "nation-wide pro-competitive policy framework" established by the Commission. Id. at para. 59. Significantly, the Commission's authority to set such national standards was resoundingly reaffirmed in the recent landmark Supreme Court decision in *AT&T Corp. v. Iowa Utilities Board*, 119 S.Ct. 721 (1999). The Supreme Court confirmed -- in a case arising specifically out of the *Local Competition First Report* - - that the 1996 Act established a new paradigm in which "the state commission's participation in the administration of the new *federal* regime is to be guided by Federal-agency regulations." 119 S.Ct 721, 730, n.6 (emphasis in original).

National standards also are particularly appropriate with regard to CMRS compensation issues because of the unique treatment of mobile services under the

[11] In light of this fact, the FCC cannot attribute the decisions in Washington and California to differences between paging networks and broadband CMRS networks generally. The simple fact is that narrowband CMRS networks, like broadband CMRS networks, have significant traffic-sensitive elements in addition to the switching element.

[12] AirTouch Paging initially appealed the Washington State decision, but the appeal was dismissed as part of a region-wide settlement between AirTouch Paging and US West throughout US West's 14-state territory.

Communications Act of 1934, as amended (the "Act"). As the Commission is aware, Section 332(a)(3) of the Act[13] prevents the states from regulating either the entry or the rates charged by any commercial mobile service provider. In light of this regulatory provision, the FCC must be particularly sensitive to any state regulatory actions that have a direct impact on CMRS rates. Certainly, rulings pertaining to the nature and scope of the reciprocal compensation payments CMRS carriers will receive from other telecommunication carriers, particularly the ILECs, will affect CMRS end user rates. The best way for the FCC to avoid having to preempt particular state actions is to establish a uniform set of costing principles applicable to wireless networks that will bring consistency to this critically important aspect of the competitive landscape.[14]

In addition, further guidance from the Commission on the CMRS compensation issue identified by Sprint PCS is necessary and appropriate. The Commission properly has acknowledged in the past that wireless services operate largely without regard to state boundaries. For example, the Commission noted in a recent order that 82 percent of MTA-based PCS license areas and 23 percent of the BTA-based PCS license areas are interstate. Thus, there are significant operations of CMRS systems across state boundaries even by smaller carriers who operate more localized or regional systems. *See Calling Party Pays Service Offerings in the Commercial Mobile Radio Services, Declaratory Ruling and Notice of Proposed Rulemaking*, 14 FCC Rcd 10861, para. 31 (1999). Moreover, the Commission also has recognized that multiple wireless carriers now are in a position to compete on a national - - indeed international - - level by virtue of the nationwide wireless footprints that they have established. *See, e.g., Vodafone AirTouch and Bell Atlantic Corporation*, Rpt. No. 371, 2000

[13] 47 U.S.C. § 332(a)(3).

[14] *See supra* note 8.

FCC LEXIS 1683 (March 30, 2000); *In re Applications of Voicestream Wireless Corporation and Omnipoint Corporation*, DA 99-1634, 15 FCC Rcd 4722. In addition, smaller, regional wireless carriers that do not plan to offer national service will also benefit from Commission guidance. The pro-consumer benefits of interstate competition cannot be fully achieved if wireless carriers are subject to a patchwork of inconsistent state regulatory rulings with regard to terminating compensation that inhibit the establishment of systemwide, regionwide and nationwide pricing plans.

Conclusion

Based upon the foregoing, PCIA respectfully submits that the Sprint PCS Request raises significant public interest issues worthy of the Commission's prompt attention in order to bring clarity to an area where federal standards are needed.

Respectfully submitted,

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Certificate of Service

I, Shandila Collins, hereby certify that the foregoing COMMENTS OF THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION was served this 1st day of June, 2000, by mailing true copies thereof, by United States First-Class Mail, postage prepaid, to the following:

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